IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 9TH FEBRUARY 2007 / 20TH MAGHA 1928

WP(C).No. 1672 of 2007(Y)

PETITIONER:

BABY JOSEPH,
FOREST CONTRACTOR, THAYYIL HOUSE, TEEKOY P.O.,
ERATTUPETTA, KOTTAYAM DISTRICT.

BY ADV. SRI.M.K.DAMODARAN (SR.)
SRI.P.K.VIJAYAMOHANAN
SMT.RESMI G. NAIR

RESPONDENTS:
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1. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
FOREST & WILDLIFE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE CONSERVATOR OF FORESTS,
HIGH RANGE CIRCLE, KOTTAYAM.

3. THE DIVISIONAL FOREST OFFICER,
KOTHAMANGALAM FOREST DIVISION, KOTHAMANGALAM.

BY GOVERNMENT PLEADER SUSEELA R.BHAT

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J.

W.P.(C) NO. 1672 OF 2007

Dated this the 9th day of February, 2007

J U D G M E N T

The petitioner quoted his rates on the basis of Exhibit P1 notification inviting tenders for felling, transporting, stalking etc of timber. Before the work was awarded to him, he brought to the attention of the competent authorities as per Exhibit P2 that following the opening of tenders, when he discussed the matter with the trade union leaders, it emerged that the trade unions insist on the labourers being paid wages at rates specified by the Government as per decision dated 21/5/2002. He accordingly requested the Government that he may be either permitted to do the work by fixing such contract amount determining the rate of labour as the rate fixed on 21/5/2002 or otherwise he may be let free from any contractual liability, including risks and costs. Thereafter the competent authority issued Exhibits P3 and P4 by which the petitioner was identified as the person who quoted the lowest, that is to say, 7% above the PAC and 3% less than PAC. The fact remains that as of now, no work has been carried out and the petitioner had essentially been shuttling between the office of

the Chief Surveyor of Forests, the Government and this Court.

2. Having regard to the facts and circumstances of the case, immediately after Exhibit P4 decision was taken on 8/10/03 identifying the petitioner as the person entitled to be engaged as the contractor, the matter had gained attention of this Court in WP(C) No. 35548/03, consequent on which the Chief Surveyor of Forests (Development) wrote Exhibit P5 to the Principal Secretary to Government. A reading of that communication will disclose the administrative wisdom leading to the recommendations made therein and the larger public interest including the financial interest of the Government that was sought to be ensured. It was also noticed that the implementation of the revised wages order on 21/5/02 was delayed because of certain discrepancies relating to the orders of wage revision. However, it is a matter of common knowledge and experience in the labour sector that when revised wages are identified by the Government or even if the Government reach a tentative decision regarding the same, the workers and the trade unions would normally insist on payment of wages at such revised rates. Such a claim by the

labour sector does not always depend upon technicality as to whether the Government have notified the revised wages or whether there is a stay of the revised wages as is in this case. I say so, because the revised wages ordered as on 21/5/02 were stayed by the Government by Government order dated 29.1.04. Though the labour sector is not an unruly lot, they cannot also be always expected to stand in abiding such stay orders and revision orders of the Government because their paramount interest is that they get the best and reasonable wages, having regard to the work involved.

Under such circumstances, it is only practical that the Government apply their mind in a reasonable and rational manner to the entitlement of the labourers for such rates for which they are demanding and take a reasonable decision in the claim of the petitioner to let him do the work at some higher rate so that he will not be put to peril by paying wages at rates determined to be with effect from 21/5/2002, though the same was stayed by the Government on 29/1/2004. The spiraling cost of commodities and the resultant increase in transporting charges and expenditures in all sectors of life is a matter of which none needs to place any

materials for any Court to take note of. The contract relatable to the year 2003 is still hanging, in 2007. This is inspite of repeated directions of this Court and the repeated tender notices issued by Government calling for alternate tenders to rearrange the work. If work is so rearranged, may be that the Government would have a right to claim risk and cost, in terms of law, from the petitioner. But the fact remains that inspite of retender, none has quoted over and above the rates quoted by the petitioner in terms of Exhibit P1. So much so, as of now, it would well be within the purview of the administrative function of the Government to reconsider its decision in Ext.P6 on the basis of Ext.P5, particularly when the petitioner, as of now, takes a stand that he is even prepared to execute the work at the rates quoted by the second lowest bidder in terms of Exhibits P3 and P4. Rather than drag on the issue, it would be appropriate that the Government address themselves on this issue and take a final decision in the matter, unless of course, the Government come to the view that the trees need not be felled at all.

3. In the aforesaid circumstances, this writ petition is

disposed of directing that the Government will reconsider Exhibit P6 in the light of Exhibit P5 and would also reconsider Exhibit R3 (e) decision because mulcting of responsibility for risk of cost can be only when the work is rearranged and the petitioner, with practical wisdom is keeping options open, to do the work at same rate as could be agreed even mutually. The Government will give the petitioner an opportunity of hearing and take a final decision in the matter within a period of one month from the date of receipt of this judgment. To enable this to be done, it is directed that all decisions against the petitioner as part of this file would not stand in the way of the Government giving a decision afresh.

THOTTATHIL B. RADHAKRISHNAN, JUDGE

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